



## DISABILITY RIGHTS NEW MEXICO

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*Promoting and Protecting the Rights of Persons with Disabilities*

### DISABILITY ISSUES IN THE 2011 LEGISLATURE STATUS REPORT #1

By Jim Jackson, Executive Director  
DISABILITY RIGHTS NEW MEXICO  
January 24, 2011

**2011 session begins.** Governor Susana Martinez opened the legislative session last Tuesday with a State of the State address that continued to emphasize her campaign messages. While calling for a bi-partisan approach to the issues, the governor appeared to leave little room for compromise on her approaches to public policy, including her position that there would be no tax increases or similar measures to increase revenues that would lessen the budget cuts she has called for.

On the legislative side, Rep. Ben Lujan (D - Nambe) overcame an internal challenge and was re-elected Speaker of the House. Some Republicans were reluctant to support an upset bid by Rep. Joseph Cervantes (D – Las Cruces), and without their strong support Cervantes lacked the votes he needed and withdrew his candidacy before the vote was taken. Rep. Andy Nunez (D – Las Cruces), a vocal supporter of Cervantes’s challenge going in to the session, was later removed from his position as Chairman of the House Agriculture Committee and has indicated an interest in leaving the Democratic party. Democrats maintain a slim 37 – 33 majority in the House.

In the Senate, there was also a notable change in committee leadership. Sen. Cisco McSorley (D-Albuquerque) was ousted as chair of the Judiciary Committee. Taking his place is Sen. Richard Martinez (D – Espanola), with Sen. Peter Wirth (D – Santa Fe) serving as the new vice-chair.

**Budget Recommendations Released; bad but could be worse.** Earlier this month, the governor and the Legislative Finance Committee (LFC) released their budget recommendations for the legislature to consider. Both budgets call for total state spending of around \$5.4 billion for FY 2012 – the budget year that begins on July 1. This represents an *increase* in state spending of around \$190 million over the current year, but that amount isn’t enough to make up for the loss of federal stimulus funds that have supported the state’s budget for the past few years, so total spending actually will *decrease* compared to the current year budget.

So even though state revenues are up in the coming year, all those new funds and more are being used to support Medicaid and the public schools. In recent years, extra federal funds have allowed the state to reduce state spending on those programs and move that state money to other parts of the budget, preventing deeper cuts elsewhere. With federal stimulus funds coming to an end, those “borrowed” state funds must be moved back to their original purpose. As a result,

most state agencies will see further budget cuts in the coming year because the new state revenues are not enough to make up for the loss of federal funds that the state has relied on over the past few years. The LFC recommendation suggests some measures that would increase revenues, but does not endorse any of them. The governor has indicated she would oppose such measures. Without adequate revenues, the only alternative is to cut state program spending.

The House Appropriations and Finance Committee will be holding hearings over the next few weeks on all state agency budgets and reviewing the executive and legislative recommendations. The committee's version of the proposed state budget (House Bill 2) should be ready by mid-February. The Senate Finance Committee will be holding its own hearings during these same weeks so that it will be ready to take quick action when the state budget bill passes from the House to the Senate. Here are some of the budget issues affecting the disability community:

**Medicaid.** Both the executive and legislative budget recommendations recognize the need to replace the federal stimulus funding with state money as the stimulus program ends. However, simply replacing lost federal dollars doesn't result in adequate funding for the program, which is experiencing the highest enrollment in history as well as coping with the increasing costs of health care. Governor Martinez campaigned on a promise not to cut the Medicaid program, and her budget recommendation for the program – about \$3.8 billion, including regular federal matching funds - comes very close to meeting the latest projected expenses in the coming year. Her recommendation for an extra \$6 million in state funding for Medicaid in the *current* year makes it easier to meet *next* year's budget needs by reducing a deficit that would otherwise carry over to the coming year.

Unfortunately, the LFC's proposed funding level for Medicaid – about \$3.67 billion – falls far short of the need. It assumes that there will be further cuts to program costs, well beyond the significant cuts that have already been made. The LFC hopes to find cost savings in cuts to the rates paid to health care providers and managed care companies, and eliminating certain benefits (vision, hearing, physical and occupational therapy) to adults on Medicaid. It also hopes to see savings by restructuring managed long-term care by building in more flexibility to the program, which advocates have been encouraging for years. The LFC supports an extra \$8 million for Medicaid in the current year to eliminate the current deficit.

**Developmental Disabilities.** The governor and the LFC have very similar recommendations for the Developmental Disabilities program at the Department of Health. Each includes an increase in state funds of about 25% over current year levels; the increase is needed due to the loss of temporary extra federal funding as well as increasing per capita costs. DOH recently announced budget cuts and provider rate cuts for the waiver program that should reduce expenses by \$10 million in the coming year. Even with those reductions in place, the department will have to further reduce average per-person spending in order to stay within those budget recommendations in FY 12. DOH is planning significant changes to the waiver program beginning July 1 that it hopes will achieve those savings. There are now over 5,700 people on the waiting list for the waiver, and the FY 12 budget recommendations provide no funding to reduce that waiting list.

**DD Planning Council.** The guardianship program at the DDPC is one of the few other programs in state government to see significant increases in the budget recommendations, which it needs in order to keep up with a rising caseload. Unfortunately, the LFC has recommended eliminating the Consumer Support program at the DDPC, which funds the Self-Advocacy Center as well as the Information Center/BabyNet information and referral

service at the Center for Development and Disability. The governor has recommended level funding for that program.

**DVR.** Faced with declining state support in the past two years, the Division of Vocational Rehabilitation has already announced that it is closing some of its local offices and will be implementing an “Order of Selection” in mid-February. That means that only persons with more severe disabilities would receive services while other eligible individuals would go onto a waiting list. This year’s budget recommendations continue this trend, with LFC and the governor each recommending a 12% reduction for DVR. In addition, the LFC recommends an 8.5% cut to Independent Living programs funded through DVR (a \$125,000 cut) while the governor recommends level funding.

**Legal services.** The Civil Legal Services Commission provides funding to non-profit agencies that provide legal services to low income individuals, including Disability Rights New Mexico. The Commission’s budget has been cut significantly in the past two years. For FY 2012, the LFC recommends a 3.5% cut to the Commission’s \$2 million state appropriation – about the same as most other state agencies. By contrast, the governor recommends cutting the program in half, apparently a backlash against some of the public policy work done by some of the agencies that receive CLSC funds.

### **Bills and Memorials – Introduced or Expected**

#### Developmental Disabilities

**HJM 13** Review of CDD programs. Rep. Danice Picraux. This memorial calls on the Center on Development and Disabilities at UNM to do a financial and legal review of its various programs and look for ways to increase training that promotes the independence of people with disabilities. HJC.

**HJM 16** Value and dignity of persons with developmental disabilities. Rep. Rick Miera and Sen. Tim Keller. This memorial calls on the governor and the legislature to recognize and respect the value and dignity of persons with developmental disabilities. HCPAC.

#### Education

**SB 142** Ancillary program units. Sen. Cyndi Nava. This bill limits the number of “ancillary services” units that public schools can generate under the school funding formula, based on the number of children in the district and the number in special education programs. SEC/SFC.

**SB 192** Special education amendments. Sen. Lynda Lovejoy and Rep. Mimi Stewart. This is a package of technical amendments to state special education law that will more closely align state definitions and requirements with the provisions of the federal IDEA. The bill also explicitly authorizes programs and services for children with developmental delay; these programs are already in place state-wide but not specifically authorized in state law. SEC/SPAC.

Additional bills are expected that would:

- Require appropriate educational interventions for children with autism in public schools
- Prohibit corporal punishment in public schools
- Prohibit school referrals to police for minor/misdemeanor offenses
- Require the PED to obtain, maintain and report on data on suspensions/expulsions in public and charter schools, to include data by gender and race/ethnicity

- Limit or prohibit seclusion/restraints in public schools

#### Government Restructuring

**HB 66** Administrative services by DFA. Rep. Lucky Varela. Under this bill, the Department of Finance and Administration (DFA) would provide budgeting and administrative services for all state agencies with fewer than 20 employees. HHGAC/HTRC/HAFC.

**SB 15** Health Policy and Financing Agency. Sen. Dede Feldman. This bill would create a new state agency that would include the Health Policy Commission, Medicaid, behavioral health, the long-term services programs (including the CoLTS program) now housed at ALTSD, the medically fragile waiver program now at DOH, and other programs. It would also restructure two of the legislature's interim committees. SRC/SPAC/SFC.

**SB 67** Administrative Hearings. Sen. John Ryan. This bill would create a new government entity that would employ the hearing officers who act as judges in administrative appeals, rather than having that function handled by the individual agencies whose decisions are being appealed. This would include appeals involving decisions by Medicaid, DVR, the DD division, etc. This bill reflects a recommendation from the Government Restructuring Task Force and may give hearing officers more independence from the provider agencies. SRC/SJC/SFC.

**SB 104** Administrative Hearings. Sen. Tim Eichenberg. This bill is identical to SB 67, above. SRC/SJC/SFC.

Other bills may be introduced that would:

- Eliminate the Governor's Commission on Disability
- Transfer long-term services programs (such as CoLTS, Brain Injury, and PCO) from the Aging and Long Term Services Department to the Human Services Department

#### Health Care

**HB 33** Health Insurance Exchange. Rep. Danice Picraux and Sen. Dede Feldman. Establishes a framework for implementation of the state health insurance exchange consistent with federal health care reform. The Exchange would be established as an independent quasi-governmental agency with a board of directors appointed by the governor and by the legislative leadership. HCPAC/HHGAC.

**HB 124** Provider notice to patients. Rep. Al Park. These amendments to the Uniform Health-Care Decisions Act would require medical providers to identify themselves to patients by name and professional category (doctor, physician's assistant, nurse, etc) prior to carrying out medical procedures on the patient. HHGAC/HJC

**HJM 9** Amendments to Affordable Care Act. Rep. Mimi Stewart. This memorial asks our Congressional delegation to support amendments to the federal health care reform law to allow states to seek waivers of the health insurance exchange requirement sooner than currently allowed. HHGAC.

**SJM 1** Health care reform work group. Sen. Dede Feldman. This memorial calls for the continuation of the health care reform work group that was established last year to assist the state in preparing for and implementing the provisions of federal health care reform. SRC/SPAC.

#### Mental Health

**HB 93** Mental health intervention training. Rep. Ed Sandoval and Sen. David Ulibarri. This bill would require police officer training in crisis intervention, confrontation de-escalation, and appropriate interaction with persons with mental impairments. The training would be provided at the police academy for new officers and as an in-service for existing officers. The bill would also require law enforcement agencies to have policies promoting appropriate interventions with persons with mental illness. HCPAC/HJC.

**HJM 17** Alternatives to incarceration. Rep. Rick Miera. This memorial calls for a task force of stakeholders to develop strategies to reduce the unnecessary incarceration of persons with mental illness. DRNM and NAMI-NM would be among the members of the task force. HHGAC.

**SB 21** Ending managed care in behavioral health. Sen. Jerry Ortiz y Pino and Rep. Antonio Lujan. This bill deletes the current requirement for the Behavioral Health Purchasing Collaborative to contract with one or more managed care entities to administer state behavioral health services, and instead calls for the state to contract directly with providers or provider networks. SPAC/SFC.

**SB 175** Choice of MH Counselors. Sen. Bernadette Sanchez. This bill amends the provision of the Insurance Code that protects the right of an insured to choose their own provider within the limits imposed by the insurance plan, by adding “professional clinical mental health counselors” to the list of practitioners. The choice of provider is still subject to the limits of the insurance plan’s coverage, so the bill would not guarantee access to a provider outside the network of contracted providers in a plan that uses such a network. The provision does not apply to health maintenance organizations (HMOs). SPAC/SCORC.

Other bills may be introduced that would:

- Amend the state Mental Health Code to limit or eliminate the role of district attorneys in filing petitions for civil commitment, because of the time and resources required to file such petitions.
- Address the effects of solitary confinement on persons with disabilities and others

#### Self-Determination

**HB 105** Electronic Voter Registration. Rep. Eleanor Chavez. This bill would allow people to register to vote on line, and authorize a link of their registration information to their driver’s license in the MVD data base for the purpose of confirming identity. HCPAC/HVEC.

**SB 146** Uniform Probate Code Amendments. Sen. William Payne. This package of amendments to the guardianship provisions of the Probate Code would clarify which state courts should address guardianship issues when the principal parties reside in different states. SPAC/SJC.

**SB 125** Limitations on driver’s licenses after age 75. Sen. Peter Wirth. This bill is intended to implement the recommendations of a task force that addressed safe driving. The bill sets up increasingly shorter periods between license renewals once drivers get to be 75 years old. It also requires more extensive testing for these older drivers than for any other drivers; this provision was not recommended by the task force and is likely to be dropped from the bill. SCORC/SJC.

Other bills may be introduced that would:

- Extend certain powers of a guardian for up to one year after the death of a protected person, in order to make funeral arrangements, wrap up the person’s affairs, and report to the court.

At present, the guardian's authority is automatically terminated upon the death of a protected person. This bill will be introduced by Rep. Bill O'Neill.

#### Other

**SB 65** Fees to Disability Fund. Sen. Phil Griego. This bill would impose an additional \$5 fee on all vehicle registration fees, \$4 of which would go to the "Disability Fund" administered by the Governor's Commission on Disability. This would generate about \$8 million per year to GCD, which could then be used to support a variety of possible disability services, as determined by the GCD. SCORC/SFC.

Other bills may be introduced that would:

- Generate more income to the Commission for the Deaf and Hard of Hearing by raising the access fee for phone service from 0.33% to 0.5%, imposing the fee on internet (VoIP) phone service, and improving collection of the fee.

### REFERENCE INFORMATION

**Contacting Your Legislators.** You can contact your senator or representative during the session:

**Telephone:** 505-986-4300. This is the Capitol switchboard operator: ask for your legislator by name and they will route your call to his/her office.

**E-mail:** To find your legislator's e-mail address, log on to the Legislature's "Find Your Legislator" web site, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>, and click on the "Alpha List" for either the House or the Senate. Not all legislators have listed email addresses.

**U.S. Mail:** Legislator's name, NM State Capitol Bldg., Santa Fe, NM 87503

Don't know who your legislators are? It's easy to find out through the internet but you'll probably need your full 9-digit zip code. If you don't know that number, you can get it through the postal service using this link: <http://zip4.usps.com/zip4/welcome.jsp>. Then log on to the state legislature's "Find Your Legislator" web page, <http://www.nmlegis.gov/lcs/legislatorsearch.aspx>. Under either the House of Representatives or Senate, click on the link to "Search by Name, District or Zip Code". You'll see a page with the photos and names of all the Representatives or Senators, with a search box near the top to search by zip code. Enter your five-digit zip code and click "Search". If you get a list including more than one Representative or Senator, you'll also get a search box at the bottom where you can enter the full 9-digit zip code. That search will result in a page that shows your specific Representative and Senator.

### ABBREVIATIONS USED IN THIS REPORT

#### State Agencies

ALTSD	Aging and Long Term Services Department
CYFD	Children, Youth and Families Department
DDPC	Developmental Disabilities Planning Council
DFA	Department of Finance and Administration
DOH	Department of Health
GCD	Governor's Commission on Disability
HSD	Human Services Department
PED	Public Education Department

#### Legislative Committees

HAFC	House Appropriations and Finance Committee
HCPAC	House Consumer and Public Affairs Committee
HEC	House Education Committee

HHGAC	House Health and Government Affairs Committee
HJC	House Judiciary Committee
HTPWC	House Transportation and Public Works Committee
HTRC	House Taxation and Revenue Committee
HVEC	House Voters and Elections Committee
SEC	Senate Education Committee
SFC	Senate Finance Committee
SJC	Senate Judiciary Committee
SPAC	Senate Public Affairs Committee
SRC	Senate Rules Committee
LFC	Legislative Finance Committee (joint House-Senate committee that meets during the interim between legislative sessions)
LHHS	Legislative Health and Human Services Committee (interim committee)